

**Statement of Alonzo Coby, Chairman of the Fort Hall Business Council
for the
Shoshone-Bannock Tribes**

Hearing on S. 2802 Blackfoot River Land Settlement Act of 2009

Senate Committee on Indian Affairs

April 29, 2010

I. Introduction

Good afternoon Chairman Dorgan, Vice-Chairman Barrasso, Senator Crapo, and other Members of the Committee. My name is Alonzo Coby, and I am the Chairman of the Fort Hall Business Council, which is the governing body of the Shoshone-Bannock Tribes located on the Fort Hall Reservation in southeast Idaho. I am honored to be here today to provide our views on S. 2802, an Act to settle land ownership issues on the Blackfoot River in southeastern Idaho.

We particularly appreciate that Senator Crapo, our Senator from Idaho, introduced this bill with Senator Risch. On the House side, Representative Mike Simpson along with Representative Walt Minnick introduced H.R. 4613, the companion bill to S. 2802. Our delegation understands the importance of resolving these historic land title issues in southeast Idaho that have created challenges for the Tribes and non-Indian landowners. We greatly appreciate Mr. Marion Walker, a landowner affected by the legislation, being able to come and offer his support. This legislation is supported by all the affected non-Indian landowners.

For over five years, these issues have been in litigation before a water master in Idaho. We have been working with the Tribal landowners, non-Indian landowners, the Bureau of Indian Affairs, the Bingham County Commissioners, and the state of Idaho to amicably address and resolve these long-standing land matters. We know the importance of working out these issues that have clouded title to these lands. The parties have concluded that the best avenue to settle

these land disputes is through this legislation. The parties hope that the Congress can enact this legislation as soon as possible given that the Court has set a December 6, 2010 trial date on these matters.

This legislation would once and for all clear up land title to the affected lands, enable the Tribes and non-Indian owners to farm or use the land, provide fair compensation to the parties, and enable the landowners' water claims to be decreed. The parties have lost valuable income due to the inability to farm these lands. These problems were created over 45 years ago when the federal government, acting through the Army Corps of Engineers, rechannelized the Blackfoot River. Given that the federal government created these problems, it should assist us in resolving them by enacting this legislation.

II. Background of the Shoshone-Bannock Tribes and the Fort Hall Reservation

The Shoshone-Bannock Tribes are a federally recognized Indian tribe organized under the Indian Reorganization Act of 1934. The Shoshone and Bannock people are comprised of several related bands whose aboriginal territories include land in what are now the states of Idaho, Wyoming, Utah, Nevada, Colorado, Oregon, and parts of Montana and California.

In 1867, President Andrew Johnson by Executive Order designated the Fort Hall Reservation ("Reservation") for various Shoshone and Bannock bands that occupied the area since time immemorial. On July 3, 1868, the Shoshone and Bannock Tribes ("Tribes") concluded the Second Treaty of Fort Bridger, which was ratified by the United States Senate on February 24, 1869. Article 4 of the Fort Bridger treaty reserved the Reservation as a "permanent home" to the signatory tribes. Although the Fort Bridger Treaty called for the Reservation to be approximately 1.8 million acres, various "surveying errors" in 1873 reduced its actual size to approximately 1.2 million acres.

One of the United States' purposes in setting aside the Fort Hall Indian Reservation was to protect the Tribes' rights and to preserve for them a home where their tribal relations might be enjoyed under shelter of authority of the United States. Subsequent cession agreements with the United States reduced the Fort Hall Indian Reservation to the present day size of 544,000 acres. Of the 544,000 acres, 97% of the land is Tribal land or held by the United States for the benefit of the Tribes or its individual members. The Tribes' territory is the largest Reservation in Idaho and forms a large cohesive geographic area that supports a population of over 6000 people and provides an irreplaceable homeland for economic activity and cultural practices based on strong religious traditions premised on the sacredness of land. Our current Tribal membership is approximately 5,300 members.

The Fort Hall Reservation is blessed with an extensive biodiversity including rangelands, croplands, forests, streams, three major rivers (the Snake, Blackfoot, and Portneuf), reservoirs, springs, and wetland areas, an abundance of medicinal and edible plants, wildlife (elk, deer, moose, bison, big horn sheep, etc.), various species of fish, birds, and other animal life. The Reservation lands are mountainous and semi-desert, and overlay the Snake River aquifer, a large groundwater resource. The culture and continued existence of the Shoshone and Bannock peoples depend on these resources.

The Blackfoot River is the Fort Hall Reservation's most northern boundary, established by the Executive Order of 1867. The Shoshone and Bannocks have an established long-standing and continuous dependence on riparian resources of the Snake and Blackfoot Rivers. While fish and fishing technologies constitute some of the strongest evidence of the dependence of Shoshone-Bannock people on riparian resources, the importance of these resources extend beyond fishing. Streams were a reliable water source for native people. The Rivers were rich in

game, including mammals and water fowl. The best winter camps were along stream courses where ample vegetation provided firewood, forage and shelter. No place illustrates the varied resources and subsistence strategies of the Shoshone-Bannock people than the Fort Hall Bottoms, located at the Snake and Blackfoot Rivers. For centuries, Shoshone-Bannock have fished, hunted, processed game, built tools and lived.

III. The United States' Rechannelization of Blackfoot River

In the 1950's and early 1960's, the Blackfoot River annually flooded and caused damage to local homes and properties. The United States Army Corps of Engineers, in 1964, undertook a local flood protection project on the Blackfoot River authorized under section 204 of the Flood Control Act of 1950. The project consisted of building levees, replacing irrigation diversion structures, replacing bridges, and channel realignment. The channel realignment portion of the project altered the course of the Blackfoot River ("River") and caused the land issues between the Tribes and non-Indians for over 45 years. The federal government moved segments of the River's "bed and banks" entirely within the boundaries of the Fort Hall Reservation.

Following the channelization, individually Indian owned and Tribally owned lands (approximately 37.04 acres) ended upon on the north side of the River, and non-Indian owned lands (approximately 31.01 acres) ended up on the south side of the River within the boundaries of the Fort Hall Reservation. Since the 1960's the parcels of land have remained idle because the Tribal and non-Indian landowners could not gain access to the parcels of land without trespassing or seeking rights-of-way across other owner's land. As mentioned previously, the inability to farm these lands has deprived landowners of vital income.

The Department of Interior, Bureau of Land Management, Cadastral Survey Office conducted surveys of the River in 1999 through 2003, and has prepared plats representing the

surveys that show the present course of the Blackfoot River and identify the Fort Hall Reservation borders that existed at the time the Reservation was established. *See* 67 Fed. Reg. 46,686 (July 16, 2002); 67 Fed. Reg. 64,656 (October 21, 2002); 68 Fed. Reg. 17,072 (April 8, 2003); 69 Fed. Reg. 2,157 (January 14, 2004); 70 Fed. Reg. 3,382 (January 24, 2005). Since the realignment of the River is considered an “avulsive act”, a change resulting from the man-made channelization, survey law deems there is no change to the Reservation boundary. The original Blackfoot River bed remains the northern boundary of the Reservation. Additionally, this legislation does not change the original boundary of the Reservation as reserved by the Executive Order of 1867 and confirmed by the Fort Bridger Treaty of 1868.

IV. Litigation

In the late 1980’s the Snake River Basin Adjudication began in Idaho to decree water rights on rivers and streams, including the Blackfoot River. Several non-Indian landowners affected by the rechannelization claimed their place of use of water was on the Fort Hall Reservation. In 2006, the Shoshone-Bannock Tribes filed objections to these claimed water rights. After extensive meetings and multiple status conferences among the court, Tribes and non-Indian landowners, it was agreed the best way to resolve these land ownership issues is through federal legislation as the state water court does not have the ability to resolve the land issues. We have filed status reports to the court advising that federal legislation has been introduced.

The Snake River Basin Adjudication court, however, has *not* stayed the trials in the water boundary cases to permit the parties to move forward with federal legislation. A trial scheduled in March 2010 on three boundary cases was postponed based on the Tribes reaching agreement with the parties. The court has scheduled trial on December 6, 2010.

V. The Legislation

This legislation serves two primary purposes. First, it would resolve the land ownership issues on both sides of the realigned Blackfoot River by extinguishing title to non-Indian owned lands on the south side with the Tribes gaining ownership, and the title to Indian owned lands on the north side being extinguished with the non-Indians gaining ownership. Second, it would provide fair compensation to the Indian and non-Indian landowners for years of trespass for the value of their lands, and provide for final settlement of all claims arising from this land controversy.

Under the legislation the Tribes and individual Tribal members would receive 31.01 acres on the south side of the River, and the non-Indians would receive 37.04 acres on the north side of the River in the legislation. This legislation addresses about 10 miles along the Blackfoot River. There are 44 loops created by the rechannelization in question, and land title would be resolved.

The Department of Interior Office of Special Trustee conducted a market study of the value of the land and calculated the amount of trespass damages that would fairly compensate the non-Indians, Tribal members and Tribes for their lands.

There are numerous benefits the landowners would receive from the proposed legislation. First, the ownership and title to non-Indian and Indian owned lands located on the north and south sides of the River would once and for all be determined. The legislation recognizes the numerous parcels held by non-Indians located on the Reservation. Second, the non-Indian landowners who currently own lands on the south side of the River on the Reservation would be monetarily compensated for their lands that they give up in the legislation. They would be compensated for the value of their lands and also receive trespass damages. Title to these lands would be transferred to the United States to be held in trust for the Tribes. Third, the legislation

would extinguish title of the United States to lands held in trust for the Tribes on the north side of the River, and these lands will be transferred to non-Indian owners.

Fourth, the non-Indians would not face any future challenges in the form of trespass actions by the United States and Tribes for their use of lands on the north side of the River. Finally, if the legislation is enacted, the Tribes would dismiss their objections relating to place of use of water they filed in the Snake River Basin Adjudication, which will enable the landowners to secure their water right decrees in the Blackfoot River for irrigation and other purposes.

In conclusion, the Shoshone-Bannock Tribes, Tribal member landowners, and non-Indian landowners share a common interest of reaching a resolution of these historic Blackfoot River land issues without having to go to court. We have worked diligently on this legislation to meet the needs of all. We ask for quick enactment of this legislation in light of the impending trial date. Thank you for the opportunity to participate in this hearing on this important subject.